

CITY COUNCIL MINUTES**November 9, 2009****REGULAR SESSION**

The Regular Session of the Auburn City Council was held in the Council Chambers, City Hall, 1225 Lincoln Way, Auburn, California on Monday, November 9, 2009 at 6:00 p.m. with Mayor J. M. Holmes presiding and City Clerk Joseph G.R. Labrie recording the minutes.

CALL TO ORDER**PLEDGE OF ALLEGIANCE****ROLL CALL:**

Council Members Present: Keith Nesbitt, Kevin Hanley, Bill Kirby, Bridget Powers, J. M. Holmes

Council Members Absent: None

Staff Members Present: City Manager Robert Richardson, City Attorney Michael Colantuono, Community Development Director Will Wong, Fire Chief Mark D'Ambrogi, Public Works Director Jack Warren, Engineering Division Manager Bernie Schroeder, Administrative Services Director Andy Heath, Code Enforcement Officer Jennifer Solomon, Police Chief Valerie Harris

MAYOR'S COMMENDATIONS/PROCLAMATIONS/ACKNOWLEDGEMENTS/ANNOUNCEMENTS

Mayor Holmes congratulated Placer Hillman for winning the game against the Colfax High School team, 34 to 27. He said the trophy will stay in Auburn for another year.

Presentation of a Certificate of Appreciation to Louise Burda Gilbert, Arts Commissioner, was postponed until the next meeting.

Mayor Holmes stated that everyone is shocked by the vicious dog attack on a young man that took place in Auburn, September 16, 2009. He advised that the City of Auburn has taken the matter to Superior Court. He said the Court has issued a judgment in the case. He said there has been a great deal of speculation in the media that the City is going to take action to ban pit bull dogs and other vicious dogs in the community. He said the City was not going to enact legislation to ban specific breeds of dogs from the community. He said

State law prohibits that action. He advised that Agenda Item 9 is not a discussion of banning dogs. He explained that it will be "a discussion of what action the City can take to strengthen existing ordinances, improve enforcement of those ordinances and hold owners responsible for the actions of their pets."

Mayor Holmes read an excerpt from a proclamation from the President of the United States regarding the tragedy at Fort Hood, Texas. He dedicated the City Council Session to the memory of those who lost their lives at Fort Hood.

AGENDA APPROVAL

The agenda was approved as presented by consensus of the Council.

CONSENT CALENDAR

1. Minutes

By **MOTION** approve City Council Minutes of October 12 and October 14, 2009.

2. Annual Local Transportation and State Transit Assistance Fund Claims

By **RESOLUTION 09-135** authorize the Director of Public Works to submit and execute on behalf of the City of Auburn the 2009/2010 Transportation Development Act Claims for the Local Transportation Fund in the amount of \$429,383 to the Placer County Transportation Planning Agency.

***** End of Consent Calendar *****

By **MOTION** approve the Consent Calendar. **MOTION: Nesbitt/Powers/ Approved 5:0**

3. Public Comment

Council Member Kirby noted that it was the twentieth anniversary of the fall of the Berlin Wall. He said it was a very significant event that he never expected to happen in his lifetime.

City Clerk Joseph Labrie announced that an assistive listening device is available for those that are hearing impaired.

REPORTS

4. Presentation by Alan Young to Auburn Fire Department

Alan Young, 140 Greenfield Avenue, Auburn, stated that in the last few weeks the Fire Department and the City of Auburn came to some difficult decisions in negotiations. He said he applauded the Council for the decisions it had to make and the Fire Department for its professionalism.

Mr. Young said the City's Fire Department has done "some marvelous things over the past 100 years." He said he left the Fire Department seven years ago as the Assistant Chief for the City of Sacramento. He said he knows that anything that could be done to protect the community has been done by the Auburn Fire Department and the Auburn Police Department.

Mr. Young advised that two and one-half years ago he received a telephone call from someone who asked him to write a portion of a book. He said the book was to develop fire service training that would be distributed internationally. He said he sought people to assist him, a technical writer, a proof-reader, and the fire service. He said the City of Auburn participated in his endeavor and assisted him in any way possible.

Mr. Young presented to the City of Auburn and the Fire Department, in appreciation of the Fire Department, a proof copy of the book. He thanked the City for allowing the Fire Department's participation and the Fire Chief for his assistance. He said the community is very fortunate to have Fire Chief Mark D'Ambrogio.

5. **Sierra Nevada Conservancy**

The report was from Mt. Lassen Area Manager Bob Kingman was postponed.

6. **AB811 Presentation by Placer County Treasurer-Tax Collector Jenine Windeshausen**

Placer County Treasurer-Tax Collector Jenine Windeshausen presented information regarding AB 811 and the Placer County AB 811 Program for possible City participation in the program. She said the bill was placed into law in July of 2008. She said it authorizes cities and counties to develop bond programs to provide property owners financing for energy efficiency, water efficiency, and for energy generation improvements to their properties. She explained it is for existing, improved property and not for new construction. She said financing is repaid on the property tax bill.

Ms. Windeshausen explained that the program provides a "local economic catalyst." She said it will provide more jobs in construction, increased building permit activity and the opportunity to bring State and Federal

money to the community through the program. She said there is potential for AB32 compliance to be utilized by local municipalities throughout the coming years. She said it will help the property owners reduce energy and utility costs.

Ms. Windeshausen explained that financing can be provided for five, ten, or twenty years. She said, "Property owners can use the program to leverage existing rebates through the utility companies and the tax credits that are available through the State and Federal Governments." She outlined eligible properties and the application process. She said the County is asking cities to encourage their residents to participate in the program. She said she would like to return to a Council meeting wherein the Council would authorize staff to execute the necessary contract with the County to participate in the program.

Council questions and comments followed regarding (1) action by the Placer County Board of Supervisors (2) participation of other jurisdictions (3) advantages of the program (4) lack of risk to City (5) useful life of the improvement financing (6) bond sales (7) interest rate and terms (8) estimated cost of the program (9) re-assessments and (10) program audits.

Mayor Holmes, without objection from the Council, asked that the resolution be placed on the next Council agenda.

7. **Informational Reports from Committees/Commissions**

Report from Library Advisory Board was postponed.

8. **City Council Committee Reports**

Council Member Hanley reported that the Greater Auburn Area Fire Safe Council reviewed the City's Strategic Plan. He said good suggestions were made and will be provided to the Fire Chief. He said the City has a petition on line for residents to sign to encourage Federal officials to address the high fuel load issue in the canyon and to work with the City.

Council Member Nesbitt advised that the Placer County Transportation Planning Agency talked about unmet needs at its last meeting. He said the pilot program to sell a surplus vehicle to the Loomis Life Center did not go through. He said the Loomis Life Center decided not to take possession of the vehicle. He said the Capital Corridor Joint Powers Authority has recognized that ridership numbers have decreased, probably due to lessening gas prices this year as opposed to last year's prices.

Council Member Powers announced the meeting of the Arts Commission. She said Council Member Nesbitt, Chair of the Streetscape History and Art Advisory Committee (SHAAC), will speak regarding the role and expectations of the Arts Commission.

Council Member Kirby said he attended a training session with Planning Commission Member Vitas. He said it was pointed out that cities need to be aware of the fact that they have a sphere of influence. He said the planning commissioners need to be directed to spend at least one session reviewing planning for our sphere of influence or it can be lost. He said he also attended the meeting of the Placer County Water Agency Board. He said the Board discussed the direction of the Agency and the City and the roles of the executive director.

Council Member Nesbitt advised that a Streetscape History and Art Advisory Committee meeting was held. He said the Committee walked the construction phase to get a feel for the project. He advised that there will be another meeting within the month.

COUNCIL BUSINESS

9. Initiate Ordinance Amendment to Update Animal Regulations

Mayor Holmes provided a brief statement to the public regarding the ordinance amendment. He reiterated that the City would not enact legislation to ban specific breeds of dogs from the community. He said the agenda item was not a discussion of banning dogs. He said the discussion would entail what action the City could take to strengthen and improve existing ordinances and hold owners responsible for the actions of their pets.

City Attorney Colantuono provided background to the Council about City animal control ordinances and those that could be enacted. He said the Food and Agricultural Code includes a clause that governs animals, potentially dangerous animals. He said that code would apply unless the City chose to replace it with its own ordinances. He explained that the City's ordinances are simple and largely rely on State law. He said State and Federal laws can be replaced or supplemented with the restriction that the City cannot regulate specifically by breed. He said the exception is mandatory spay, neuter and breeding programs. He explained if the Council chose breed-specific versions of those programs, quarterly reports to the State would be required regarding dog bites by breed. He said that would create the burden of statistical gathering and reporting.

City Attorney Colantuono said that another concern of City Attorneys regarding breed-specific regulations is that the breed of an animal is not

always "objectively determinable." He said it can be a matter of opinion. He said, without expert determination, identification of a breed by a law enforcement officer may be difficult. He said, "Even to the extent the Legislature allows us to regulate in a limited way by breed, there are practical obstacles to doing so." He said the City's current zoning ordinance is fairly outdated in "what it has to say about animal husbandry as a land use matter." He explained the current ordinance. He said the Council can further regulate a variety of issues regarding animals provided that dogs are not regulated in a breed-specific way, other than for spay, neuter, and breeding.

City Attorney Colantuono said, without direction from Council, staff will continue to develop animal control ordinances as the need arises. He advised that Council may want to give staff direction in prioritization or in specific areas of concern, and staff will take that direction and act upon it.

Community Development Director Wong said that due to the recent dog attack, the item has been very controversial. He said the Community Development Department has recently assisted the Police Department with animal issues. He advised that the Community Development Department has determined that the animal regulations need to be updated. He said such things as the number of animals, and standards for chickens and pigs need to be addressed. He said Code Enforcement Officer Jennifer Solomon has been working on updating the animal regulations. He said the planners are working on updating animal standards in the zoning ordinance. Mr. Wong said he wanted the Council to know that they have been working on the ordinance, and will continue to do so, as time permits.

Mayor Holmes asked how a citizen can report a stray dog and have the animal picked up. Jennifer Solomon recommended contacting the Police Department to ascertain whether or not an animal control officer is on duty who can respond. Police Chief Harris said a police officer can respond, if the need arises, and may use his discretion as to whether or not a citation should be issued.

Council Member Hanley said, "Putting the dog attack issue aside, and based on the fact that our animal regulations were last updated in 1997, what kinds of problems are you seeing based on neighbor complaints or other that you find our current ordinance does not really address?" Ms. Solomon advised that she has dealt with such issues regarding chickens and horses. She said that she felt the nuisance ordinance needed to be strengthened to include habitually barking dogs. She said neighboring jurisdictions have been reviewed in preparation of an update utilizing that information for the City of Auburn's revisions.

Council Member Nesbitt asked who determines the difference between “a potentially dangerous and a vicious animal.” Police Chief Harris said it depends whether or not the animal has actually bitten someone, the degree of the attack, and its previous and current behavior. City Attorney Colantuono explained that “vicious” would mean seriously harming someone or killing an animal. He said “dangerous” means the animal has bitten someone without serious harm or “inspires fear in others.” He explained that the determination denotes how the animal will be handled. He said a potentially dangerous animal has caused no injuries, but may be running at large and “engaging in aggressive behavior.” He said those standards come from the Food and Agriculture Code.

Addressing the recent dog attack issue, City Attorney Colantuono advised that killing a dog in an attack is justified. However, a government entity, after the fact, when there is no immediate threat of harm, must give the owner due process before the dog can be put down. Chief Harris advised that the City does have a policy on how to handle these situations.

Council Member Powers asked if any provision could be in an updated ordinance to help prevent an attack as the one that occurred. Chief Harris said there are many variables but that possibly fence requirements and inspections may have helped. However, she said, that it comes down to the animal owner's responsibility. City Attorney Colantuono stated that the public needs to make the Police Department aware of any animals it views as potentially dangerous. Council Member Powers suggested that some educational materials be provided to the public and that other jurisdictions' ordinances be perused to assist in the City's update.

Council Member Kirby stated that there have been three recent issues regarding dog attacks. He said the issue is real and needs to be presented to municipalities. In addition, he said, “I do not believe in the supremacy of Legislature on issues this mundane. We should be able to make whatever laws we decide appropriate.” He said he was not interested in breed specific regulations. He said the City needs to protect its citizens from having to make decisions regarding the use lethal force. He said the City can begin regulating the number of animals on one property site, implementing more severe penalties for owners, and enhanced enforcement while respecting the rights of responsible dog owners.

Council Member Hanley said he received information of an organization that is against breed-specific legislation. He said one of the alternatives provided was that owners should be encouraged to spay and neuter their dogs. Council Member Hanley said there are some responsible owners of Pitt Bulls and other dogs. He said those dogs are well-trained and well-behaved. He said he worries about another element that thinks Pitt Bulls

are "macho" and are not responsible owners. He said he is concerned with "gang influence as far as owners that are involved with drugs or gangs and have these dogs that they abuse." He said Pitt Bulls are the most abused dogs and that is the reason why 58% of euthanized dogs are Pitt Bulls. He said Placer County is offering free spay and neutering for Pitt Bulls.

Police Chief Valerie Harris said that there needs to be a balance in lieu of an extreme in control of ownership. She said if there are allegations of abuse or dog fighting, the Police Department will investigate. She suggested strengthening laws to provide for whatever action needs to be taken to alleviate the problem. She said Council may want to give direction on limiting the number of pets in a household, added enforcement and increased fines as a means of creating balance and improving safety within the community.

Mayor Holmes said this could be a possible use for the 211 phone system wherein a citizen can call a non-emergency number to report a concern or a specific situation.

City Attorney Colantuono advised that restrictions of dog ownership can be placed on a probationer prior to sentencing. The City must ask the District Attorney's Office to ask that the stipulation be placed on the person prior to the grant of probation.

Dawn Capp, Director of Coalition of Human Advocates for K9s & Owners (CHAKO), stated that she is an attorney and complimented the City Attorney on his summary of the issue. She argued that dogs that are not spayed or neutered are not necessarily more aggressive. She said that Contra Costa attempted to limit felons in ownership of dogs. She said it could not be done because of the Americans with Disabilities Act. She supported strengthening the existing ordinances and looking at responsible dog ownership.

Dale Smith, North Auburn resident, said the lengthy period of time it has taken to decide the fate of the dogs involved in the attack has caused the public to react as it has. He said the dogs should have been seized on the night of the attack.

Council Member Kirby said that non-neutered male dogs are more aggressive in any situation.

Council Member Hanley reminded the public that the City of Auburn encouraged the creation of the dog park in Auburn. He said most of Auburn residents are responsible dog owners. He said although he personally is aware of only two dog attacks in Auburn during his tenure,

the Council cannot ignore a public safety issue. He said there have been numerous attacks in other jurisdictions. He said that he has asked that staff provide the Council with a full range of options to consider.

Council Member Nesbitt said that he wants to look at strong, preventative measures in strengthening the ordinance. He said he wants an ordinance that allows for swift and decisive action if something occurs.

Council Member Powers asked that the ordinance amendment be placed higher on the priority list.

By **RESOLUTION 09-136** direct staff to initiate an ordinance amendment to update the City's animal regulations. **MOTION: Powers/Nesbitt/**
Approved 5:0

10. **City Property, Brewery Lane**

Mayor Holmes advised that the item had been on a previous agenda and that additional information will be presented.

Community Development Director Will Wong said that when the item was presented to the Council on October 12, 2009, the main concern was the historic preservation area shown on the assessor's map. He said after staff researched the area it was found to be a requirement of the subdivision. He said, "Through the EIR they identified the brewery foundation and the staff requires, through its mitigation, the dedication of the property." He said there were no other limitations to the property other than the EIR did address saving the brewery foundation. He said there are some public utility easements on the property. He said if the City is to consider use of the property, it must locate the foundation.

Mayor Holmes said that several years ago the Old Town Business Association (OTBA) had submitted a letter suggesting that parking be considered for the area. City Manager Richardson said that letter did not go before Council for its direction. He staff had dealt directly with OTBA regarding the issue eighteen months to two years ago. He said it was decided to wait until after the completion of the parking study before dealing with some of the issues involved in utilizing that property. Mayor Holmes said he felt the City should continue to explore the property for additional Old Town parking. He said it would help with employee parking and relieve the parking areas in Old Town.

Council Member Hanley said that the City needs to work with active volunteers to initiate consideration of the property for parking. He suggested that a Leadership Auburn Class take on the project. However, the current class already has a project for the year. He said that Bruce

Cosgrove, Auburn Chamber of Commerce, suggested that possibly Bob Snyder, Economic Development instructor, could ask his class to take an active role in developing a plan. Council Member Hanley asked that City staff try to find volunteers in the community to put a plan together.

Council Member Nesbitt stated that he concurred with Council Member Hanley. He said he liked the idea of an employee parking area, with limited signage and additional lighting.

Council Member Powers said that parking in that area should be considered with constraints and issues presented to the Council. She suggested a more formal ad hoc committee with defined duties.

Council Member Kirby said that since that there should be designated employee parking in another area. He said he would like staff to prepare some recommendations for the best uses of the property and then, at that time, form a committee. He said a small park to memorialize the brewery may be an idea.

Mayor Holmes said that one of the issues mentioned to him was "access and possibly a pedestrian easement between the Ale House and Old Town Pizza." He said the property owner would prefer not to provide an easement, but the possibility should be addressed.

By **MOTION** direct staff to analyze the use of the property for parking, specifically employee parking. **MOTION: Nesbitt/Hanley**

Council Member Hanley said that he agreed with both Council Member Nesbitt's motion and Council Member Powers' suggestion of an ad hoc committee. He said he would like the ad hoc committee to work in accordance with City priorities.

City Manager Richardson said that "there has been sufficient work done by staff to be able to move forward rather quickly." He said he did not see a problem with initiating an ad hoc committee relatively soon.

Council Member Kirby asked if the motion would preclude staff examining other uses of the property. Council Member Hanley responded that it would encourage staff to get involved in giving recommendations for full use of the property.

By **AMENDED MOTION** direct staff to analyze the use of the property, for parking, specifically employee parking, and establish an ad hoc committee. **MOTION: Nesbitt/Hanley/Approved**

ADJOURNMENT

Mayor Holmes, without objection, adjourned the meeting at 8:19 p.m. to meeting of the Auburn Urban Development Authority in memory of those who lost their lives at Fort Hood.

J. M. Holmes, Mayor

Joseph G. R. Labrie, City Clerk

CITY COUNCIL MINUTES

November 23, 2009

REGULAR SESSION

The Regular Session of the Auburn City Council was held in the Council Chambers, City Hall, 1225 Lincoln Way, Auburn, California on Monday, November 23, 2009 at 6:00 p.m. with Mayor J. M. Holmes presiding and City Clerk Joseph G.R. Labrie recording the minutes.

CALL TO ORDER

ROLL CALL:

Council Members Present: Keith Nesbitt, Kevin Hanley, Bill Kirby, Bridget Powers, J. M. Holmes

Council Members Absent: None

Staff Members Present: City Manager Robert Richardson, City Attorney Michael Colantuono, Associate Planner Lance Lowe, Fire Chief Mark D'Ambrogi, Public Works Director Jack Warren, Engineering Division Manager Bernie Schroeder, Administrative Services Director Andy Heath, Police Chief Valerie Harris

By **MOTION** adjourn to a Closed Session under Government Code Section 54957.6:

(1) **CONFERENCE WITH LABOR NEGOTIATORS**

Agency Designated Representatives: Robert Richardson, David Mackowiak
Employee Group: All Bargaining Units

(2) **CONFERENCE WITH LEGAL COUNSEL**

Anticipated Litigation
(G.C. 54956.9(b))

A point has been reached where, in the opinion of the City Council/Agency on the advice of its legal counsel, based on the below-described existing facts and circumstances, there is a significant exposure to litigation against the City Council/Agency.

Facts and circumstances that might result in litigation but which the City/Agency believes are not yet known to potential plaintiff or plaintiffs.

G.C. 54956.9b(3)(A)

REPORT OUT OF CLOSED SESSION

No reportable action.

PLEDGE OF ALLEGIANCE

MAYOR'S COMMENDATIONS/PROCLAMATIONS/ACKNOWLEDGEMENTS/ANNOUNCEMENTS

Mayor Holmes presented a Certificate of Appreciation to Louise Burda Gilbert, Chair of the Auburn Arts Commission from 2001 through 2009.

Mayor Holmes advised that the Placer Hillman football team won its last game 57 to 20. He said he has suggested that they be invited to participate in the Festival of Lights Parade along with the Placer High School marching band.

Mayor Holmes said, with reference to Auburn's Animal Control Ordinance update, that he has obtained a sample ordinance from the City of Fremont which seemed to cover many of Auburn's concerns. He provided a copy to the City Manager for possible use in Auburn's update.

AGENDA APPROVAL

Council Member Powers advised that the Arts Commission was due to report and was not included on the agenda. She said the entire Commission was in attendance and would like to report to the Council. Mayor Holmes advised that the report would be heard immediately following the Consent Calendar.

CONSENT CALENDAR

1. Warrants

By **RESOLUTION 09-137** ratify and approve payment of warrants 72994 through 73679 totaling \$4,040,414.44.

2. Minutes

By **MOTION** approve City Council Minutes of October 26, 2009.

3. PG&E Easements for Rule 20A Undergrounding

By **RESOLUTION 09-138** authorize the Public Works Director to execute easement documents with Pacific Gas and Electric Company for

infrastructure due to undergrounding within City of Auburn property (APN 002-145-016 and 002-145-027).

4. **Tax Sharing Agreement between Placer County and the City of Auburn for the LAFCO Annexation of a Parcel at 13620 New Airport Road**

By **RESOLUTION 09-139** approve the Tax Sharing Agreement between the County of Placer and City of Auburn thereby completing the application with the Placer County Local Agency Formation Commission (LAFCO) to annex \pm 8.3 acre property located at 13620 New Airport Road

5. **Strategic Plan to Aid in the Prevention of Catastrophic Wildfire in the City of Auburn**

By **RESOLUTION 09-140** approve the Strategic Plan to Aid in the Prevention of Catastrophic Wildfire in the City of Auburn.

6. **Quarterly Report of Investments – Quarter Ending September 30, 2009**

Receive, review and file the “City of Auburn Quarterly Investment Report” for the quarter ending September 30, 2009.

7. **Resolution Approving the City’s Participation in Placer County’s AB 811 Program**

By **RESOLUTION 09-141** consent to the inclusion of properties within the incorporated area of the City of Auburn in the Placer County AB 811 program, Placer mPOWER, to finance energy and water efficiency and distributed generation renewable energy source improvements for property owners within the city limits, and authorize certain City staff to enter into a cooperative agreement outlining the City and County roles and responsibilities regarding the Placer mPower program.

***** End of Consent Calendar *****

By **MOTION** approve the Consent Calendar. **MOTION: Nesbitt/Powers/ Approved 5:0**

7a. **Report from Arts Commission**

Arts Commissioner Secretary Sue Dings introduced the Commissioners to the Council. She advised the Council of the experience and background of each member. Ms. Dings outlined the various undertakings of the Commission explaining the (1) mural projects (2) City Hall Gallery (3) Art

Walk Music (4) community involvement (5) public art tour brochure and the (6) Streetscape project. She said all the activities were performed under the leadership of the former Arts Commission Chair Louise Burda Gilbert.

8. **Public Comment**

Council Member Kirby stated that he attended the Placer Hillman game and noted that Coach Randy Fee, Men's Cross Country Team, was honored for having won the sectional championship. He asked if he could be included in the Festival of Lights Parade. Mayor Holmes agreed that Mr. Fee should be included.

Council Member Bridget Powers stated that she attended the Mandarin Festival. She said it was a very successful event at the Gold Country Fairgrounds.

PUBLIC HEARING

9. **Planning Commission Appeal – Tuscan Palms Townhomes Design Review, Tentative Subdivision Map and Tree Permit: 133 & 141 Electric Street**

Associate Planner Lance Lowe introduced the item. He advised that the item before the Council was an appeal of the Planning Commission's approval of the Tuscan Palms design review, tentative subdivision map and tree permit. He said the horseshoe-shaped property is located at 133 and 141 Electric Street and wraps around two existing single family dwellings.

Mr. Lowe said the property is bordered by multiple and single family residences. He said the zoning is medium-density, multiple-family and the general plan is high-density residential, which allows five to fifteen units per acre. He said the application proposes slightly less than fifteen units per acre. He further explained (1) demolition of existing buildings (2) surrounding land uses (3) property location and frontage (4) waived curb gutter and sidewalk installation (4) driveway location (5) entrances and exit to the north (6) turn-around area (7) carport detail (8) trash enclosure (9) conditions of approval requiring red paint on drive for fire conditions and fire suppression system (10) parking standards (11) retaining walls and fences (12) landscape plan (13) tree removal and (14) architecture. He said the project is in accordance with the general plan and project standards have been met.

Mr. Lowe advised that after a long discussion the Planning Commission approved the project by a four-to-one vote. The opposing Commissioner

indicated that she would have liked to allow additional time for the adjoining property owners to fully read the report and peruse the various conditions of approval.

Mr. Lowe stated that the appeal filed cited (1) open space (2) privacy (3) noise (4) sewer capacity (5) drainage (6) water table (7) parking and (8) tree impacts as the reasons for the appeal. He provided Council with an explanation of each item of the appellant's concern. He said the Planning Commission's recommendation was as follows:

- A. By **RESOLUTION** deny the appeal thereby affirming the Planning Commission's approval of the Tuscan Palms Townhomes Design Review, Tentative Subdivision Map and Tree Permit as present, which includes the following actions:
1. Adoption of a Class 32, Categorical Exemption, prepared for the Design Review, Tentative Subdivision Map and Tree Permit as the appropriate level of environmental review in accordance with the California Environmental Quality Act (CEQA) and Guidelines;
 2. Adoption of "Findings of Fact" for approval of the Design Review, Tentative Subdivision Map and Tree Permit as presented in the Council Report; and,
 3. Approval of the Design Review, Tentative Subdivision Map and Tree Permit in accordance with the "Conditions of Approval" as amended by the Planning Commission and presented in the Council Report.

At the Mayor's request, Mr. Lowe explained that "LEED" stands for Leadership in Energy and Environmental Design. He said it is a rating system based on "high quality, energy efficient green building design." He said there are levels of LEED and the project should achieve the second highest level.

Council questions and comments followed regarding (1) opaque windows (2) trash collection location (3) resolution of drainage issue (4) Home Owners Association responsibilities (5) omission of a sight line diagram (6) privacy of duplex residents (7) turning area for large vehicles (8) LEED standards for windows (9) Planning Commission review of privacy issue (10) sewer issues (11) parking (12) fire vehicle access to the area (13) privacy barriers such as trees (14) entrance to Electric Street and (15) privacy regulations.

Mayor Holmes opened discussion for proponents of the project.

Mark Pohley, 2305 Country Lane, Auburn, owner of properties at 133 and 141 Electric Street, presented the project. He said his family is native to Auburn and he is a local builder. He said he, and his family, wanted the project to be in compliance with all the parameters set forth by the City. He said he did not request any variances or conditional use permits. He said he wanted it to be a LEED certified project. He said the project meets the City's general plan and zoning ordinances and all other applicable regulations. He explained that the project was determined to be suitable for construction per the Cultural Resources Survey and all other required reports. He said the project has been approved by all City Departments involved with the project and the Auburn Planning Commission. He said it will be the first LEED certified project in Auburn.

Matt Pohley, 1620 High Street, Auburn, advised the Council of what a LEED certified project entails and responded to each item of the appellant's appeal. He explained that his background is in civil engineering. Mr. Pohley addressed the following appellant concerns: (1) density and open space (2) privacy concerns, protection and barriers (3) sewer and drainage (4) existing trees (5) driveways and parking spaces (6) fire department access (7) garbage disposal service access and (8) lack of vehicular impact on Ruby Street.

Mayor Holmes asked that the appellants address the Council.

Nancy Lange, 139 Electric Street, presented her arguments. She said 45 to 50 families on Electric Street and Ruby Street would be impacted by the project. She said the parcel maps of thirty years ago, or longer, differ from the current map. She said the parcel identified as 141 Electric was part of her 139 Electric Street parcel. She said there has been "re-parceling" as the various lots were sold throughout the years. She said although the area was re-zoned, the results cannot be justified. She said R-3 zoning is not acceptable with the changes in the properties. She said she understands the City's desire to generate an infill project but its approved development has resulted in a "patchwork" project. She said the number of units is not reasonable and should be decreased. She said absentee homeowners could become absentee "landlords" within the Home Owners Association. She also expressed concerns for trees, open space, storm drain and sewer line issues, vacant units and the surface of the driveway.

Mr. Lowe responded by stating that the zoning has been in effect since 1978. He said the Home Owners Association CC&R's are only as good as the enforcement. He said the project complies with the open space standards and all other standards of the City. He said if the driveway's

surface needs to be changed to allow additional water to the trees, the arborist will have to sign off on the approved plans.

Kristi Jogis, 179 Electric Street, stated that she has owned her home for ten years. She stated that the project does not fit into the neighborhood. She said there will be additional traffic and noise in the neighborhood. She said the City should consider that there are not any usable sidewalks in the area.

Sergio Platono, 6669 Alta Park Circle, Roseville, California, stated that he owns the two duplexes at 125 through 131 Electric Street. He said those addresses are next door to the properties proposed for development. He advised that he had sent a letter to the Mayor and Council Members explaining his opposition to the project. He said he objected to (1) how the Planning Commission improperly handled the issue (2) the lack of concern for neighbors by the contractor (3) disruption of the neighborhood (4) allowed footage of set-backs (5) fencing specifications and (6) the placement of trees. Mr. Platono said he was only given a three minute opportunity to speak at the Planning Commission meeting.

Mr. Lowe confirmed that time was limited from three to five minutes. He said the Chair felt that other citizens should be allowed time to speak. He advised that Planning Commission meeting ended at almost 11:00 p.m.

Starr McKersie, 156 Electric Street, said that she did attend the Planning Commission meeting. She said she wanted to convey her frustration with the project. She said it is not the right neighborhood for the type of project presented. She said the infill project will be an eyesore and it is too large for the site. She said it will take away from the country atmosphere.

Earl Wilson, 154 Electric Street, requested that the appeal be upheld by the Council. He said the project is not compatible with the neighborhood and "the development is not fully workable." He said the project will change the environment of the established neighborhood. He said the project would over-develop the property, limiting privacy and light for the current residents. He said palm trees are not consistent with other trees in the neighborhood. He also objected to the (1) turning area (2) additional noise (3) additional traffic and (4) lack of a requirement for curb and gutter.

Diane Roberto, 115 Electric Street, explained that the Planning Commission did not allow ample time for those who wanted to speak at its meeting. She said her neighbor would "actually be horseshoed-in" if the project is allowed. She explained that no one is concerned about where that neighbor is supposed to live during construction or with the cleaning of her home after project completion. She said the neighbors were given

notice only ten days prior to the Planning Commission meeting. She said, although it did not give anyone enough time to prepare for the hearing, she did acquire fifty-three opposing signatures to the project within three days. She said she opposes the project because (1) there is not a play area for children (2) eleven native trees need to be removed (3) palm trees are not consistent with other neighborhood trees (4) unacceptable fencing requirements and (5) of the destruction of the character of the neighborhood.

Elizabeth Kennedy, 140 Ruby Street, said that her main concern was the sewer. She said pipes have been leaking for over thirty years. She said there has been water under her house for over forty-five years. She said there have been sink holes and problems in the area for years. She said those issues need to be addressed before any project in the area is approved.

Gretchen Hecker, 152 Electric Street, stated that she was an eleven year resident of her home. She said it is a dangerous area to walk because there are no sidewalks. She said the addition of more apartments would create even a greater concern for pedestrian safety.

Ken Johnson, 115 Electric Street, advised that he was at the Planning Commission meeting. He explained that his concerns were (1) garbage receptacle location and the (2) front bay window moldings.

Mary Ellen Niedzielski, 180 Diamond Street, advised that the Planning Commission Chair explained the protocol prior to hearing comments. She said it was explained that each speaker would have approximately three minutes to address the Commission. She said the Chair was generous with the time allotted and did not strictly enforce the time limit. However, the Chair did appear to allow more time to the proponents of the project. She said, although the proponents were allowed to rebut arguments, the opponents were not given the same opportunity. She said she agreed with the comments made by her neighbors. She said the issue that the neighborhood is trying to address is "the high density project." She said they do not disagree with the LEED program. She said the project is not a good fit with the existing structures. She said City correspondence refers to zoning as "medium density," but the Planning Department refers to the project as "high density." She said, although the discrepancy was brought to the attention of the Commission, an explanation was not provided. She was also concerned with parking, a play area for the children and LEED requirements for access by foot to other facilities.

Mayor Holmes said that he was concerned that all those who wanted to make statements to the Planning Commission were not afforded proper time to do so. He said that possibly the Planning Commission should

have continued the meeting to allow testimony for all who wanted to speak. He said that he felt the Council did not want to get into the business of the Planning Commission by making adjustments to the project.

Lance Lowe explained that General Plan designates high density residential for the area. He said in order to implement that, the property is zoned medium density residential R-3 which is the density residential designation. He said the City does not have R-4 designation.

Council Members comments and questions followed regarding (1) time of availability of packet for Planning Commission meeting (2) curb and gutter exclusion (3) Ruby Street access and (4) term of R-3 designation.

Sergio Platono addressed the Council again and asked that it consider sending the item back to the Planning Commission for additional consideration. He said his concerns were (1) saving specific trees (2) soil removal (3) drainage (4) site coverage and density (5) carport setbacks (6) walkway between carport and fence (7) visitor parking (8) fire truck access (9) strain on infrastructure for high density project (10) traffic and (11) placement of the condenser units.

Timothy Lopez, 120 Diamond Street, advised that he attended the Planning Commission meeting. He said that he felt that those who are impacted by the project were not given enough time to study the project prior to the meeting. He asked that the Council consider all of the issues presented by his neighbors.

By **MOTION** uphold the appeal based upon substantial evidence in the public record thereby denying the Tuscan Palms design review tentative subdivision map and tree permit; and, direct staff to prepare appropriate findings and resolutions for City Council consideration at the next available meeting. **Hanley/Nesbitt**

Council Member Hanley said he respected the property owners and some of the things they want to do on LEED. He said developers are expected to want to make a profit on their investments. He said he did not view the project as compatible with the neighborhood, but did support appropriate infill projects. He said he felt the project was over-sized and did not allow any open space areas. He said there are unresolved issues of (1) trees (2) parking (3) fencing and (4) construction impacts on Mrs. Lange. He said he would support downsizing the infill project and uphold the appeal.

Council Member Nesbitt said he liked the aesthetics of the project, but favored lessening the number of units. He responded to concerns of (1)

access to parking spaces (2) lack of lawn area (3) walking in the area and (5) curbs and gutters. He said he would vote to uphold the appeal.

Council Member Powers said that there were too many unresolved questions and felt that the developer should have spoken to neighbors to address their concerns. Council Member Powers stated that although the project does meet all City codes, and is within General Plan specifications, "it feels too big." She said that she would like the project returned to the Planning Commission to ask the developer to talk with neighbors to try to resolve some of the problems.

Council Member Kirby said his concern was that the developer has followed all the rules. He said, although it is a large project for the area, it meets with all City specifications. He said he supports infill projects and neighborhoods will change. He suggested returning the project to the Planning Commission without taking action on the appeal.

Council Member Hanley said the Council should define what it wants the Planning Commission to do. He said the Council can make findings to say why a project is not feasible. He said the Council can uphold the appeal even though City specifications have been met.

Mayor Holmes said he favored upholding the appeal "with the understanding that the developer come back through the Planning Department, having talked to the neighbors, and come up with another proposal."

City Attorney Michael Colantuono advised that the options available to the Council were (1) deny the appeal and approve the project (2) grant the appeal (3) continue the hearing (4) remand the item to the Planning Commission for further consideration with Council instruction or (5) approve it with a different set of conditions that have been imposed. He said it was a policy matter for the Council's decision. He said, if the appeal is upheld, the developer can seek judicial review of the Council's action or apply for a new set of entitlements. He said the Council could wave any new fees.

Mayor Holmes said, if remanded back to the Planning Commission, the Council should state that the project is too large and should involve discussion with impacted neighbors.

By **AMENDED MOTION** remand to the Planning Commission for reconsideration of the project and all issues raised regarding it in light of the Council's conclusion that the development was too intense for the constrained site and was incompatible with its neighborhood. **MOTION: Hanley/Nesbitt/Approved 5:0**

REPORTS

10. Sierra Nevada Conservancy

Bob Kingman, Mt. Lassen Area Manager, provided Council with an update on the Sierra Nevada Conservancy. He said the Conservancy celebrated its five year anniversary. He said the Conservancy has felt very welcomed by the City. He said, as with all State agencies, funding will lessen. He said the sale of public bonds did not go as well as planned, but did provide enough funds for the Conservancy to honor its commitments. He said there may or may not be future bond sales. He said if the State is able to sell more bonds, the Conservancy could advertise for more grants.

Mr. Kingman said the next board meeting is scheduled for December 2-3, 2009. He said the meetings are alternated throughout various locations within the twenty-two counties and six regions of the Sierra Nevada Conservancy. He said the Conservancy will discuss conditionally authorizing grants to provide the opportunity for the recipients to secure funding to finish their projects. He said it would allow them the possibility of being reimbursed for their grants if State bonds are sold within the next two years.

He said the Conservancy has partnered with the Sierra Business Council and the National Geographic Society on a Geo Tourism project. He said the Conservancy has also undertaken the development of a new California license plate. He said, if 7,500 plates are sold, the Department of Motor Vehicles will establish the program. He provided literature on the program and said that the Conservancy is seeking partners to help market the plates.

Council questions and comments followed regarding fire suppression grants and the City's appreciation of the Conservancy and its Auburn location.

13. Winery Directional Signs

Teena Wilkins, winery owner and Placer County Wine Industry Task Force Member, asked that the Council approve the placement of winery directional signs in the city right-of-way to promote the industry. She said the Task Force is also asking that the City help with a request to CalTrans for winery-specific signs on Highway 49. Ms. Wilkins provided the general locations of the signs that will be installed on existing poles whenever possible.

Engineering Division Manager Bernie Schroeder said the nature of the work is very standard. The signs will be manufactured by the City of Auburn. She said that the resolution was slightly modified to require the applicant to obtain encroachment permit.

By **RESOLUTION 09-142** approve the installation of directional signs within the City right-of-way. **MOTION: Powers/Nesbitt/Approved 5:0**

11. **City Council Committee Reports**

Item moved to follow Item 12.

COUNCIL BUSINESS

12. **Resolution Urging the Governor and State Legislature to Approve CALPERS pension reform in 2010**

Mayor Holmes advised that he received the information regarding the item from the Orange County Vector Control and Mosquito District in Southern California. He said Orange County has been able to go to the Legislature and make some changes in its CalPERS pension reform. He said the resolution does not specify any particular change but simply urges the Governor and State Legislature to consider the reform.

Council Member Powers said that she can accept a tiered program for new employees. She said she is not comfortable supporting new retirement formulas for retirement at a later age for those already in the work force.

Mayor Holmes stated that it is his understanding that it would not be retroactive to employees currently close to retirement. He said it would apply only to those hired after a certain date which has not yet been decided. He said he thought those currently under the CalPERS retirement system would not have their benefits changed.

Council Member Powers said that those who are currently under the retirement system should not have their retirement dates changed.

Council Member Kirby said that government should operate as any other business. He said those in the private sector do not get to retire at age 50 and get another job. He said the practice has to stop. He said the public is tired of lifetime benefits, firefighters' medical benefits for life and benefits of 80% at age 50. He said those practices are no longer acceptable and should have never been allowed. He said it stemmed from the fact that politicians did not want to give people legitimate raises, but were willing to give them some future benefit. He said the practice is

no longer affordable and has to stop and include employees currently in the system.

By **RESOLUTION 09-143** urge the Governor and State Legislature to approve CALPERS pension reform in 2010. **MOTION: Hanley/Kirby/ Approved 4:1 (No, Powers)**

13. **Winery Directional Signs**

Item moved to follow Item 10.

11. **City Council Committee Reports**

Council Member Nesbitt stated that as Chair of the Placer County Transportation Planning Agency he has served on the Capital Corridor Joint Powers Authority Board. He said the Capital Corridor continues to perform well. With the exception of one route in the eastern United States, the Capital Corridor has the best "on-time" performance in the nation. He said it will be difficult to increase ridership without a "rolling stock", which will become a big issue soon. He said there is continued discussion on adding a couple of extra trains to Auburn.

Council Member Nesbitt said the Youth Advisory Commission will begin to meet quarterly instead of monthly. He said the Commission has some ideas on internship programs and youth activities.

He said the Streetscape History and Art Advisory Committee was going to have a workshop to discuss a theme. He said there have been many good ideas provided by various interested participants.

ADJOURNMENT

Mayor Holmes, without objection, adjourned the meeting at 10:01 p.m. to meeting of the Auburn Urban Development Authority.

J. M. Holmes, Mayor

Joseph G. R. Labrie, City Clerk

